

OPINION ENTERED: June 21, 2012

CLAIM NO. 200900155

SHELLEY MYERS

PETITIONER

VS.

APPEAL FROM HON. OTTO D. WOLFF,  
ADMINISTRATIVE LAW JUDGE

BEST BUY  
and HON. OTTO D. WOLFF,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

AMENDED OPINION  
AFFIRMING IN PART, VACATING IN PART,  
AND REMANDING

\* \* \* \* \*

BEFORE: ALVEY, Chairman, STIVERS and SMITH, Members.

**STIVERS, Member.** On August 3, 2010, this Board entered an opinion affirming in part, reversing in part, and remanding. In reversing, on page 17 of our opinion, we stated as follows:

Finally, we are compelled to address the date upon which the ALJ commenced PPD benefits. In his final order, the ALJ awarded PPD benefits for

425 weeks beginning on August 13, 2009, the MMI date upon which the ALJ relied, instead of February 15, 2009, the date Myers sustained the work-related injury. However, in Sweasy v. Wal-Mart Stores, Inc., 295 S.W. 3d 835 (Ky. 2009), the Supreme Court of Kentucky determined "the compensable period for partial disability begins on the date that impairment and disability arise, without regard to the date of MMI, the worker's disability rating, or the compensable period's duration." Id. at 839-840. Therefore, in the case *sub judice*, the award of PPD must commence on February 15, 2009, the date on which Myers sustained her injury. While this issue was not raised by the parties to the ALJ or on appeal, KRS 342.285(2)(c) gives the Board authority to determine if an order, decision or award is consistent with the provisions of Chapter 342. Also, KRS 342.285(3) provides that the Board may remand a claim to an ALJ "for further proceedings in conformity with the direction of the board." Thus, under the authority granted to this Board by statute, we reverse the ALJ's opinion, order, and award regarding the date upon which the award of PPD benefits commence and remand for entry of an amended opinion, order, and award consistent with the views expressed in this opinion.

Accordingly, the ALJ's March 26, 2010, opinion, order, and award, is **AFFIRMED** in part, **REVERSED** in part, and **REMANDED** for entry of an amended opinion, order, and award consistent with the views expressed in this opinion.

On April 13, 2012, the Court of Appeals entered an opinion affirming in part, reversing in part, and

remanding. As grounds for reversing in part and remanding, the Court of Appeals stated as follows:

Finally, we note that in its order, the Board remanded this matter to the ALJ to fix the appropriate date upon which to begin PPD benefits. We agree that pursuant to the mandates set forth in *Sweasy v. Wal-Mart Stores, Inc.*, 295 S.W.3d 835, 836 (Ky. 2009), the compensable period for PPD benefits begins on the date that the impairment and disability arise, without regard to the date of MMI, the worker's disability rating, or the compensable period's duration. However, our review of the Board's order indicates the Board utilized incorrect dates. The Board concluded the ALJ improperly awarded benefits "beginning on August 13, 2009, the MMI date upon which the ALJ relied, instead of February 15, 2009, the date Myers sustained the work-related injury." Our review of the record indicates Myers was injured on August 13, 2008, and the MMI date chosen by the ALJ was February 15, 2009. Thus, the Board's order contains a patent error and we must reverse in part and remand this matter to the Board for entry of an amended opinion utilizing the correct dates of injury and MMI as found in the record.

Therefore, for the foregoing reasons, the order of the Board is affirmed in part, reversed in part, and remanded for further proceedings consistent with this Opinion.

In accordance with the directions of the Court of Appeals, only the language contained in the first full

paragraph beginning on page seventeen of the August 23, 2010, opinion is amended to read as follows:

Finally, we are compelled to address the date upon which the ALJ commenced PPD benefits. In his final order, the ALJ awarded PPD benefits for 425 weeks beginning on February 15, 2009, the MMI date upon which the ALJ relied, instead of August 13, 2008, the date Myers sustained the work-related injury. However, in Sweasy v. Wal-Mart Stores, Inc., 295 S.W. 3d 835 (Ky. 2009), the Supreme Court of Kentucky determined "the compensable period for partial disability begins on the date that impairment and disability arise, without regard to the date of MMI, the worker's disability rating, or the compensable period's duration." Id. at 839-840. Therefore, in the case *sub judice*, the award of PPD benefits must commence on August 13, 2008, the date on which Myers sustained her injury. While this issue was not raised by the parties to the ALJ or on appeal, KRS 342.285(2)(c) gives the Board authority to determine if an order, decision or award is consistent with the provisions of Chapter 342. Also, KRS 342.285(3) provides that the Board may remand a claim to an ALJ "for further proceedings in conformity with the direction of the board." Thus, under the authority granted to this Board by statute, we reverse the ALJ's opinion,

order, and award regarding the date upon which the award of PPD benefits commences and remand for entry of an amended opinion, order, and award consistent with the views expressed in this opinion. Therefore, on remand the ALJ shall commence the award of PPD benefits on August 13, 2008, the date of the injury.

Accordingly, the March 26, 2010, opinion, order, and award, is **AFFIRMED** in part, **VACATED** in part, and **REMANDED** for entry of an amended opinion, order, and award consistent with the views expressed in this opinion.

ALL CONCUR.

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